

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

December 16, 2004

GSBCA 16489-RELO

In the Matter of AMY OESTREICH

Amy Oestreich, Sandpoint, ID, Claimant.

Kathleen L. Gay, Chief Financial Officer, Plumas National Forest, Forest Service, Department of Agriculture, Quincy, CA; and Deborah F. Bush-Butler, Office of Finance, Forest Service, Department of Agriculture, Arlington, VA, appearing for Department of Agriculture.

BORWICK, Board Judge.

The United States Department of Agriculture, agency, through the United States Forest Service, seeks recovery of a debt against Amy Oestreich, claimant, for relocation payments made upon claimant's transfer to the Plumas National Forest in California. The agency established the debt because it concluded that claimant violated her agreement to remain in federal service for one year after her appointment. For the reasons below, we conclude that the agency properly applied statute and the Federal Travel Regulation (FTR) in establishing the debt and that the agency's refusal to excuse claimant's violation of the service agreement was not arbitrary and capricious.

Background

Claimant began her appointment at the Plumas National Forest on May 19, 2003. She signed a service agreement in which she agreed to remain in the service of the Federal Government for twelve months following the effective date of her transfer or appointment.

After her transfer to the Plumas National Forest, the agency reimbursed claimant \$12,410.52 for her relocation expenses associated with that transfer.

On March 13, 2004, claimant wrote the Personnel Office at the Plumas National Forest: "Effective March 8, 2004, I . . . am resigning from my position as Lead Firefighter . . . on the Plumas National Forest." The Standard Form 50 resulting from that letter states that claimant's resignation from her position at the Plumas National Forest was effective on March 8.

On or about March 8, the agency's District Ranger at the Sandpoint Ranger District, Sandpoint, Idaho, issued a request for personnel action for claimant's appointment effective April 5 at the Idaho Panhandle National Forest. According to the agency, claimant started at her new position on April 4.

When the Plumas National Forest's Transfer of Station Coordinator learned that claimant had resigned from the Plumas National Forest, instead of transferring from the Plumas National Forest to the Idaho Panhandle National Forest, she contacted the agency's National Finance Center (NFC) to advise NFC of claimant's resignation. On or about May 24, the NFC billed claimant for \$12,410.52 for breach of her service agreement because of claimant's separation from Federal service the previous March.

Upon receipt of the bill, claimant called the Plumas National Forest Transfer of Station Coordinator to dispute the debt. Claimant told her that the reason she left the Plumas National Forest was that she had been having trouble in her work environment.

In the agency's region, the coordinator assembles a package of relevant materials to submit to this Board should an employee desire to appeal a disputed claim for travel or relocation expenses. Claimant sent materials to the coordinator and a forwarding memorandum. In the memorandum claimant explained that she "resigned" (quotes are hers) from her permanent position to accept a temporary position at the Idaho Panhandle National Forest. Claimant stated: "I felt it was in the best interest of my family to accept a temporary position closer to home." She stated that she used her four-week break in service to move personal items stored in California to her home in Sandpoint, Idaho. Claimant argued that she did not resign from the Forest Service but transferred positions within the Forest Service. Claimant also argued that there is nothing in her service agreement that requires that the twelve-month period be consecutive.

In subsequent correspondence to the Board, claimant stated that she had informed her supervisor at the Plumas National Forest that due to "continual problems" in the workplace she would be making every attempt to find employment elsewhere within the Forest Service.

Discussion

Transfer or resignation

Despite claimant's protestations to the contrary, claimant did, in fact, resign her position at the Plumas National Forest; she did not transfer without a break in service from the Plumas National Forest to the Idaho Panhandle National Forest. Under Office of Personnel Management regulations, an "appointment" is defined as the initial employment of a person who is not currently employed by the agency. But an appointment is also defined as a transfer between agencies and subsequent employment when there is a break in service. A break in service is defined as a period of four or more calendar days during which an individual is no longer on the rolls of an executive agency. 5 CFR 300.703 (2004).

In this matter, claimant submitted a letter of resignation effective March 8 and the agency issued the Standard Form 50 acknowledging her resignation effective on that day.

Claimant was off the rolls of the agency between March 8 and April 4, a period of more than four calendar days. When the agency hired her effective April 4 or 5, that action constituted an appointment, not a transfer of position. Claimant's stated intention towards the end of the 2003 fire season to seek employment elsewhere within the Forest Service does not change the fact that she resigned from her position at the Plumas National Forest.

The service agreement

Under the terms of her service agreement, claimant agreed to remain in the service of the Federal Government for twelve months, i.e., until May 18, 2004. Contrary to claimant's position, the twelve-month period of required service is consecutive.

Statute provides in pertinent part:

An agency may pay travel and transportation expenses . . . and other relocation allowances under this section and sections 5724a, 5724b, and 5726(c) of this title when an employee is transferred within the Continental United States only after the employee agrees in writing to remain in the Government service for 12 months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. If the employee violates the agreement, the money spent by the Government for the expenses and allowances is recoverable from the employee as a debt due the Government.

5 U.S.C. § 5724(i) (2000). The common dictionary meaning of the word "remain" is "to continue without change of condition, quality or place." Webster's II New Riverside Dictionary 993 (1984).

The FTR echoes the statute. For transfers within the continental United States, the FTR provides that the service agreement shall require a minimum period of service of twelve months following the effective date of a transfer. 41 CFR 302-2.13(a) (2003).

Case law has interpreted the twelve-month period of service mandated in statute and regulation to be a consecutive period. See Finn v. United States, 428 F.2d 828 (Ct. Cl. 1970) (federal employee who, without gap in government service, transferred from FBI to IRS satisfied service agreement when he remained in federal service for required period); Villareal v. EEOC, 591 F. Supp. 1477, 1487 (W.D. Mo. 1984), aff'd, 760 F.2d 199 (8th Cir. 1985) (statute requires a commitment to remain in government service for one year); Rick A. Schmidt, GSBCA 13966-RELO, 97-2 BCA ¶ 29,223; Craig Keller, B-260471 (Feb. 29, 1996); Thomas D. Mulder, 65 Comp. Gen. 900 (1986).

Consequences of breach of service agreement

Since claimant resigned her position at the Plumas National Forest effective March 8, slightly more than ten weeks shy of her twelve-month service obligation, she was subject to the consequences prescribed by statute, 5 U.S.C. 5724(i), and the FTR. As noted above, the statute provides that if an employee violates the service agreement, the money spent by the Government for the expenses and allowances associated with the employee's transfer is recoverable as a debt due the Government unless the employee is separated for reasons

beyond the employee's control. In this regard the FTR provides that upon an employee's violation of the service agreement, the Government may recover transfer expenses from the employee unless the violation was beyond the employee's control and acceptable to the agency concerned.

The determination whether or not to release an employee from her service agreement is a matter of agency discretion; the determination will not be overturned unless there is no reasonable basis for it, i.e., unless the agency determination was arbitrary and capricious. Roberta B., GSBCA 15320-RELO, 01-2 BCA ¶ 31,565; Deborah C. Brooks, B-255496 (Apr. 20, 1994); John P. Maille, 71 Comp. Gen. 199 (1992). The agency billed claimant for her relocation expenses, concluding that her resignation was a matter of choice since she could have processed a transfer to another office within the agency, instead of resigning her position.

Here, claimant told agency officials that she left the Plumas National Forest and moved to Sandpoint, Idaho, to be closer to her family. Such personal reasons are insufficient justification for overturning the agency's determination that claimant must reimburse the Government her transfer expenses. Jose Cabrera, Jr., GSBCA 15332-RELO, 01-1 BCA ¶ 31,212. Claimant suggests that she encountered trouble on the job. Such vague statements are not sufficient for overturning the agency's determination. Brooks. Claimant has not explained why her work environment caused her to resign her position rather than seek a transfer.

It is regrettable that claimant's choice of resignation put her in such difficulty regarding the relocation benefits the Government had paid her. Claimant, however, has stated no ground for release from the obligations of her service agreement and the concomitant debt established as a result of her violation of that agreement. The Board, therefore, must deny the claim.

ANTHONY S. BORWICK
Board Judge